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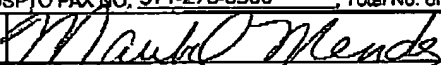
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TRANSMITTAL FORM <small>(to be used for all correspondence after initial filing)</small>	Application Number	10/626,314
	Filing Date	July 24, 2003
	First Named Inventor	Lothar SCHWINK et al.
	Art Unit	1626
	Examiner Name	Sackey, Ebenezer O
Total Number of Pages in This Submission		5 pgs.
Attorney Docket Number		DEAV2002/0052 US NP

ENCLOSURES (Check all that apply)		
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Firm Name	AVENTIS PHARMACEUTICALS INC.	
Signature		
Printed name	Joseph Strupczewski	
Date	08/11/2005	Reg. No. 50,903

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PATENT**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Application of
Lothar Schwink, et al.

Examiner: Sackey, Ebenezer O

Art Unit: 1626

Application No.: 10/626,314

Filed: July 24, 2003

Title: Substituted Diaryl Heterocycles, Process
For Their Preparation And Their Use As
Medicaments

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Response to Restriction/Election Requirement Under 35 U.S.C. § 121

Mail Stop Amendments

Commissioner for Patents
P. O. Box 1450
Alexandria, VA 22313-1450

Sir:

This is a response to the outstanding Office Action, dated June 30, 2005, for which a response is due by July 30, 2005. Pursuant to the petition for a one-month extension of time submitted herewith under the provisions of 37 C.F.R. 1.136(a), the period for response is extended to August 30, 2005. This response is therefore timely filed. Entry of the following election with traversal is respectfully requested.

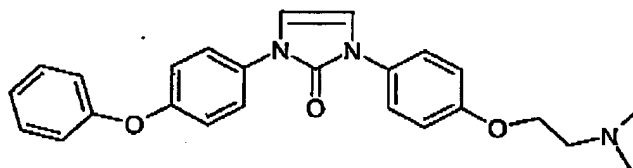
Provisional Election of Invention

The Examiner has imposed a five-way restriction requirement for the instant application, asserting that claims 1-8 and 22-25 designated Group I, drawn to compounds and pharmaceutical compositions classified in classes 540, 546, 548 and 514 in various subclasses describe one invention, whereas claims 9, 18-19 designated Group II, drawn to methods of use (preventing excessive weight or obesity and related diseases) classified in class 514, in various subclasses describe another, Group III claims 10-11 in part 15-17 drawn to method of use (treating psychiatric conditions) classified in class 514, in various subclasses, Group IV, claims 11 in part, 12, 20 and 21 drawn to methods of use (treating type II diabetes and related diseases) classified in class 514, in various subclasses and Group V, claims 13 and 14 drawn to methods of use (treating arteriosclerosis and high blood pressure) classified in class 514, in various subclasses. Applicants disagree, but

nonetheless provisionally elect Group I invention claims 1-8, and 22-25 for initial prosecution with traverse.

Provisional Election of Species

To comply with the Examiner's Election of Species Requirement, Applicants provisionally elect the species of Example 1 as described in the specification on page 21 and is the matter of claim 8. Applicants also note that claims reading upon this species are claims 1-7 and 22-25.



1-[4-(2-Dimethylaminoethoxy)phenyl]-3-(4-phenoxyphenyl)-1,3-dihydroimidazol-2-one

Traverse of Restriction Requirement

Applicants respectfully submit that this five-way restriction as imposed by the Examiner is improper based on the following grounds:

2. There is no undue burden on the Examiner to search for all of the claims as they all have a single class in common.
3. Product, process of making them and their uses should be rejoined pursuant to MPEP 821.04

Now, we address each one of these three issues in greater detail. First, Applicants respectfully submit that the search of all of the claims 1 to 25 should not impose any undue burden on the Examiner. As it is evident from the first paragraph above, it appears that all five invention groups have in common the same class, that is class 514. Therefore, it is respectfully submitted that all of these invention groups can be searched together. Even more importantly, when the Examiner is searching in one class, that itself may facilitate the search of the other invention group. Thus, it does not impose any undue burden on the Examiner to search all these invention groups together. Therefore, Applicants respectfully submit that the five invention groups be rejoined and examined together.

Secondly, Applicants submit that product and the related process and use claims should be rejoined pursuant to MPEP 821.04. As noted in MPEP 821.04:

"However, if *applicant elects claims directed to the product*, and a product claim is subsequently found allowable, *withdrawn process claims* which depend from or otherwise include all the limitations of the allowable product claim *will be rejoined*.

Where the application as originally filed discloses the product and the *process for making and/or using the product*, and only claims directed to the product are presented for examination, when a product claim is found allowable, applicant may present claims directed to the *process of making and/or using the patentable product by way of amendment pursuant to 37 CFR 1.121*.

(emphasis added)

Finally, Applicants respectfully submit that this five-way restriction imposes an undue expense on the Applicants and discourages Applicants to maintain a plurality of patents, which is against the constitutional intent to promote the progress of science and technology and thus against the public policy. For these reasons and for the reasons advanced above Applicants request the Examiner to reconsider and withdraw this restriction requirement.

Applicants have included a petition for an extension of time for one-month and have authorized payment of the appropriate fee. If the Commissioner deems that additional fees are due, please charge these fees to Deposit Account No. 18-1982 for Aventis Pharmaceuticals Inc., Bridgewater, NJ. Please credit any overpayment to Deposit Account No. 18-1982.

Respectfully submitted,



Joseph Strupczewski, Reg. No. 50,903

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